

**Town of Bethany Beach  
Planning Commission Minutes  
July 21, 2012**

The Bethany Beach Planning Commission held a meeting on Saturday, July 21, 2012 at 9:00 a.m. in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

The following members were present: Fulton Loppatto, who presided; Lew Killmer; Mike Boswell; Faith Denault; John Gaughan; and Chuck Peterson.

Also present: Susan Frederick, Building Inspector; Councilpersons, Jerry Dorfman, Joseph Healy and Margaret Young; Lindsey Good, Administrative Secretary; and interested members of the public.

Mr. Killmer called the meeting to order at 9:00 a.m.

**OPENING OF MEETING**

Mr. Killmer advised that the agenda be amended so that the first item to be discussed is "Item III. New Business (A.) A Preliminary Plan Review and a Possible Vote to Consider the Application for a Major Subdivision filed by John Cooper and Carolyn Hockman with John, William and Christine Addy for Property Identified as Lots 3 and 5, Block 140, at 67 and 69 Kent Avenue, in the R-2 Zoning District", and to then call a brief recess before continuing with the remaining agenda items. There were no objections to amending the agenda.

Mr. Killmer stated that, since he is a non-voting member of the Planning Commission as well as a member of the Town Council, and that there is potential of the Town Council to vote on the use of existing drainage as being proposed in the Preliminary Plan application, therefore Mr. Fulton Loppatto, Vice Chairman of the Planning Commission will hold the position as Chair for the first agenda item and Mr. Killmer stated that he will not participate in the discussion of this agenda item at this time.

**NEW BUSINESS**

*A . A Preliminary Plan Review and a Possible Vote to Consider the Application for a Major Subdivision filed by John Cooper and Carolyn Hockman with John, William and Christine Addy for Property Identified as Lots 3 and 5, Block 140, at 67 and 69 Kent Avenue, in the R-2 Zoning District*

Mr. Loppatto reviewed the rules and regulations of a Preliminary Plan Review. There are three (3) phases in the process and there are as follows:

- 1.) Sketch Plan Review
- 2.) Preliminary Plan Review
- 3.) Final Plan Review

He explained that this is a Preliminary Plan Review, which is a review that will be voted on. In a Preliminary plan review the Planning Commission reviews the application to ensure that it conforms to the requirements in the Town Code and that the submitted drawings contain all of the information specified.

Mr. Loppatto read into the record that this an application for a major subdivision filed by John Cooper and Carolyn Hockman with John, William, and Christine Addy for property identified as Lots 3 and 5, Block 140, at 67 and 69 Kent Avenue, in the R-2 Zoning District. This application was submitted by Jeff Clark, Land Tech Land Planning LLC for the owners of the property.

Ms. Frederick stated that the notice of the meeting was properly posted as required per the Town Code.

Ms. Frederick advised that pursuant to Section 410-23, Preliminary Plans, the drawings meet all of the required information except for the following:

1. 410-23 ( C ) (1)
  - a. Street and lot plan to bear the words “preliminary street and lot plan”.
  - b. Total area of all public rights-of-way to be dedicated not provided.
  - c. Consent by owners of property to subdivide not dated.
2. 410-23 ( C ) (2)
  - a. Drainage drawings shall bear the words “preliminary drainage plans”.
  - b. Existing contour lines to be shown as solid lines and proposed contours shown as broken lines.
  - c. Drawings to have drainage flow arrows.
3. 410-23 ( C ) (3)
  - a. Water and Sewer line drawings to bear the words “preliminary water and sewer line plan”.
  - b. Dimension and locate all easements for proposed Town waterlines and sewer line.
4. 410-23 ( C ) (4)
  - a. Electric line and street light drawings to bear the words “preliminary electric line and streetlight plan”.

Ms. Frederick explained that the property consists of approximately 191,332.9 square feet or 4.39 acres and has approximately 204.02 linear feet of frontage on Kent Avenue. The property is zoned R-2 residential and single-family dwelling lots, are approved in this zoning district. The applicants are proposing a Major Subdivision to develop the parcel into eighteen (18) single-family dwelling unit lots ranging in size from 7,020 square feet to 8,248 square feet. This exceeds the minimum lot size of 7,000 square feet. The lots front on two proposed streets that meet the minimum 50’-0” width with a 22’ wide paved roadway surface. At the Sketch Plan Review of the proposed subdivision, the Planning Commission agreed to waive the requirement for sidewalks, curbs and gutters. The proposed subdivision may or may not meet the following requirements of Chapter 410 Subdivision of Land, Section 410-38 General Standards:

1. Common open space areas are required consisting of but not limited to lawns, trees, landscaping, sidewalks or pathways and benches. Open spaces shall consist of both active and/or passive uses and area. The open space shall not comprise less than 10% of the gross area of the subdivision and the open space may be open to the residents of the subdivision or be dedicated to the Town. The required amount of open space is 19,133.29 square feet. The plans show open space area of 21,526 square feet located along the rear property lines of lots fronting on Cooper Drive. This area also includes the proposed 20' drainage easement on the north side and the 10' drainage easement on the south side. The proposed remaining level open space areas are long thin areas to be maintained by the development. (Section 410-38 (B))
2. A landscape buffer using a combination of berms and/or plantings is required between the subdivision and Kent Avenue. (Section 410-38 (C))

Mr. Loppatto explained that during the Sketch Plan Review on November 26<sup>th</sup>, 2010 the Planning Commission gave direction to the applicants of items that they wanted to be addressed in the Preliminary Plan, and he asked that the representatives address the six (6) comments, suggestions, and/or requirements in depth when presenting the information on the existing drainage, the size, and all of the details of the plan.

Mr. Loppatto requested that an in-depth study of the surrounding property easement areas be provided, and to identify any existing swales, grades and existing trees and vegetation along with photographs of the existing conditions. He emphasized that the concern of existing trees needs to be addressed in greater detail.

Mr. Jeffrey Clark, Engineer of Land Tech Land Planning, representative of the applicants John, William, and Christine Addy together with John Cooper and Carolyn Hockman, presented the proposed application for a major subdivision located at 67 and 69 Kent Avenue. The applicants wish to create a subdivision of their adjoining Kent Avenue properties situated in the Town.

Mr. Clark reviewed the Street and Lot Plan (Sheet #1) of the Preliminary Plan. He explained that both sites are unoccupied, and predominantly wooded. The property is surrounded by developments on all sides, and is one of the last large tracks of land in the Town to be developed. The proposal is a main street ending in a "T", which would be constructed to the Town of Bethany Beach's standards. There are eighteen (18) lots and each lot meets the minimum lot size requirements for the Town of Bethany Beach. There is no direct access to Kent Avenue by any of the lots.

Mr. Clark reviewed the Preliminary Street Profiles, (Sheet #2). He stated that it is a profile of the street system in the subdivision of the proposal, and it essentially illustrates the proposed grading of the street in relation to the existing grade of the property.

The Preliminary Drainage Plan (Sheet #3) was referenced by Mr. Clark. He explained that the street water runoff would be handled by an open swale and culvert pipes located at proposed driveways to the street in the subdivision. Storm water runoff from the lots would be controlled at the rear of the lot. It is drained through a shallow swale system, and then carried through the Bethany Beach drainage easements to an existing drainage ditch.

Mr. Clark acknowledged that he was advised by Bethany Beach Town Manager, Clifford Graviot, that the decision on the use of the Town of Bethany Beach's drainage easements by this applicant rests with the Town Council.

Mr. Clark presented the Preliminary Water and Sewer Line Plan (Sheet #4). The sanitary sewer concept plan as proposed has been approved by the Sussex County Engineering Department.

The Preliminary Electric Line and Streetlight Plan (Sheet #5) was reviewed next by Mr. Clark. . He explained that they plan to use a streetlight fixture called a "Wadsworth Post", a fourteen (14) foot tall fluted case aluminum post, which is a more traditional light design. They have chosen a type of streetlight then directs the light down towards the street and not towards houses.

Mr. Clark reviewed the Proposed Planting Plan (Sheet #6), Tree Inventory/Replacement Plan. The planting detail includes a proposal of a number of trees to be removed and to be replaced on the site.

Mr. Michael Kobin, George, Miles and Buhr LLC (GMB), Project Manager, presented information on the Planting Plan and Drainage Plan (Sheet #3) at this time. He assured that much effort was made to abide to the Planning Commission's request to maintain as many trees as possible.

Mr. Loppatto questioned how much of a disturbance it would be on surrounding neighbors when the construction of the ditch is taking place. Mr. Kobin stated that it was their intent to have it occur only within the existing easements.

Mr. Gaughan stated that Mr. Kobin indicated that current practice favors the open drainage design. Mr. Kobin expressed that it is favored from an environmental standpoint. Mr. Gaughan questioned if there is a way to combine the Town Code requirement of having underground storm pipes with the proposal? He noted that during the Sketch Plan Review, a discussion was ensued regarding the issue of volume of water, and it has been suggested to install a storm pipe to help drain the storm water.

Mr. Kobin replied that the requirement that Mr. Gaughan is referencing in the Town Code does not apply to this particular case, because the proposed ditches do not interfere with the public's safety and welfare. In regards to culverts, it was addressed at the Sketch Plan Review how an open drainage system is much more efficient than a culvert.

Mr. Gaughan referenced the north and south drainage ditches on the illustration, and asked how wide and deep they are going to be. Mr. Kobin said that they will have two-foot (2') wide bottoms and be generally one (1) foot deep. The total width of the ditch would be eight (8) feet.

Mr. Gaughan noted that at the Sketch Plan Review, the proposed subdivision showed two (2) stormwater management ponds that were also utilized as open space, but the current proposal has been modified deleting the ponds and adding ditches along three sides.

Mr. Clark explained that since now that the property has a direct connection to tidal water, the law allows for what is being proposed and it has been approved by the Sussex County Soil Conservation. Mr. Clark referred to the concern of the depth of the stormwater ditch, and he stated that the deepest part of the ditch would occur at the site where the proposed ditch along the southern property line intersects with the ditch along the western property line draining south.

Mr. Loppatto noted that there is twenty (20) feet of open space on the bottom of the ditch, and twenty-five (25') of open space on the north end, and questioned how much open space is the easement. Mr. Clark replied that there is ten feet (10') in the easement.

Mr. Gaughan noted the residential drainage requirements in Chapter 395-30 (C ) and the requirements stated in 395-34 of the Code. Ms. Denault questioned if this section of the Town Code includes subdivisions. Mr. Peterson stated that it does not; it is a requirement for single-family homes. Mr. Gaughan advised that since this proposal is a site development plan, then the proposal must conform to these requirements as long as there is a single property houses existing there.

Ms. Frederick noted that house plans are required to direct its downspouts and gutters away from their foundation but not onto their neighboring property, and it cannot be within five (5) feet of the property line. She added that many houses do not have that type of stormwater drainage system.

Mr. Loppatto noted that the Code requires drainage systems to drain into the existing drainage system. He questioned what the requirement is for properties that don't have an existing drainage system and no existing swales or drainage plan.

Ms. Frederick stated that she has done minimal research on this, but the current and past codes state that if the Town requires a drainage easement, then the easement is to given to the Town upon recordation of the approved plat.

At this time, Mr. John Murray of Kercher Engineering, Inc. (KEI) presented information on the application. He stated that the open ditch design is the preferred option, since a closed ditch drainage would not get re-charged and the open ditch design will not adversely impact downstream properties. The existing easements in the Beachwood and Bethany West Subdivisions have been forwarded to the Town Council for review.

Mr. Gaughan questioned if there are current methods for enhancing and/or constructing a stormwater drainage system that doesn't require clear-cutting. Mr. Murray explained any method would create disturbance in areas. There are some methods that don't involve clear-cutting, however, such methods do not address the conveyance of swales.

Mr. Gaughan expressed concern of whether clear-cutting serves the purpose easing hardship of construction or is it a necessity to maintain the water flow. Although he agrees that the applicant/property owners have the right to develop their property, he is trying to fulfill their needs while not negatively affecting the neighboring property owners.

A five (5) minute recess was called at 10:40 a.m.

Mr. Gaughan asked if all three (3) of the subdivisions would benefit from what is being proposed. Mr. Murray expressed that an area of subdivisions would benefit by establishing increased safety during a storm.

Mr. Gaughan asked Mr. Murray if, in his professional opinion, are there other approaches to help with the drainage design in able to accommodate the needs of all parties involved? Mr. Murray emphasized that there are limited options for conveying the stormwater.

Hearing no further comments or questions from the Planning Commissioners, Mr. Loppatto expressed his appreciation to Mr. Clark, Mr. Kobin, and Mr. Murray for taking the time to provide information on the plan, and for addressing all of their questions and concerns.

The discussion was opened to members of the public to address any questions or concerns at this time.

Property owner, Robert Bradley, stated that he his speaking on behalf of himself and his neighbors, and added that he has been a registered civil engineer for forty (40) years.

He acknowledged that he does support the development, but expressed that he opposes the stormwater management being proposed in this plan because it lacks suitability and would consequent an illegal taking. He emphasized that the applicants have no right to construct ditches on twenty-one (21) properties.

Property owner, Thomas Little, stated that he opposes this plan and expressed safety concerns of the ditches.

Property owner, Michael Farrar, stated that as he expressed in his letter that he submitted to the Planning Commission, he opposes this application in its current form. He does not oppose the landowners developing their private property, but feels they must do so in compliance with laws and regulations that are designed to protect their neighbors. He advised that the application not be approved unless it is amended to create and to adhere to a plan that would manage stormwater on-site, as the developer should have done in the first place.

Property owner, Anthony Chifollo, asked the following questions: 1.) What is the cost is of the Town infrastructure and the cost of the new water tower? 2.) Is there are any provisions in the plan with regards to solar or sustainable energy. 3.) Will there be traffic issues on Kent Avenue with this proposal?

Mr. Loppatto replied that all of his questions are included in the Town Code, and the applicants received approval from the Delaware Department of Transportation (DelDOT). Each property owner decides on solar power installation.

Property owner, Daniel Martin, noted that he and Mrs. Martin are the new property owners of a property on Lekites Avenue, and asked that the plans be updated to show them as the owners of 412 Lekites Avenue.

Property owner, Ronald Vickers, does not oppose the development of the property, and expressed concern of maintenance of the drainage system and the issue with bugs and mosquitoes. If the issue of the open ditches can be resolved, then he is in agreement with the application.

Property owner, Timothy Long, supports development of the property, but opposed the application as it is being presented. He expressed concerns of safety and mosquitoes. He is urging that the Planning Commission request the applicant to consider an alternative plan.

Property owner, Joseph Colosi, asked the following questions: 1.) How much will the current grade be raised and how will it compare to the current system? 2.) Will the filling be above the grade levels? 3.) Have the adverse consequences been reviewed and what would happen if the proposed drainage system doesn't work properly?

Mr. Loppatto explained that the Addy/Cooper property is currently lower than the neighboring properties. There are certain regulations in the Code that pertain to this application and must be followed. He advised that the Town would be sure to implement a successful drainage system.

Property owner, Betty Vickers, expressed that it was previously stated that the Addy/Cooper property is below grade, and disagreed, stating that this property is in fact not below grade. She also said that it was stated that the stormwater will not drain into surrounding properties, and she also disagrees with this statement. She opposes water flowing into other properties and also opposes the removal of trees.

Property owner, Tom Gallagher, advised that stormwater must be managed on-site, for any proposal. He asked if the culvert proposal is above the existing grade. Mr. Loppatto stated that it is not above grade.

Property owner Bob Bradley stated that a possible alternative proposal would be to create stormwater pond(s) at the rear of the property and an out fall to run through a closed piped system through an easement along side property lines of two abutting properties in Bethany West to Doral Drive and then run down Doral to an easement along the side lot line of Mr. Farrar's property at 533 Doral Drive to the outfall.

Mr. Gaughan referenced Mr. Bob Bradley's suggestion, and asked Mr. Clark what his opinion of the recommendation is. Mr. Clark explained that there are no easements in place to allow such a proposal, which is why the current plan has been submitted.

Mr. Michael Farrar acknowledged that Mr. Bradley's proposal would add very little flow to the stormwater at the rear of his property. He feels it is a sensible recommendation, and he would be willing to provide his property as an easement to make this suggestion possible.

Hearing no further questions or comments from the public, Mr. Loppatto called for a vote at this time.

#### Vote Discussion

Ms. Denault stated that she opposes this application because she is very unsatisfied with the drainage plan as presented and the arrangement of the plans required open space.

Mr. Gaughan stated that he opposes the application because he is concerned with the drainage plan as well as the easements. He acknowledged that his question of the use of easements is not for the Planning Commission to answer, and will need to be explained at the Final Plan Review. He has a question of the ownership of the easements and a question of the potential new easements. He also opposed the lack of open space.

Mr. Loppatto advised that the Planning Commission can't take any action on the easements, and can only vote on the proposed plan.

Mr. Peterson emphasized that he doesn't feel anyone is completely satisfied with the plan as it is being presented, but doesn't think it should be rejected because of one detail since the Planning Commission has no control over it.

Mr. Boswell stated that it is the responsibility of the Town Council to determine the greater good for the Town, and it is the responsibility of the Planning Commission to determine if the applicants have met the requirements of the Town Code. Therefore, he feels that they should vote to approve the application so it can be forwarded to the Town Council to be voted on.

Mr. Loppatto advised that the Planning Commission has the responsibility of reviewing the application to ensure it conforms to the Town Code, and the Town Council is responsible for voting on the easements.

Mr. Peterson made a motion to approve the application for a major subdivision filed by John Cooper and Carolyn Hickman with John, William and Christine Addy for property identified as Lots 3 and 5, Block 140, at 67 and 69 Kent Avenue, in the R-2 Zoning district, with the following condition before it is submitted to the Final Plans Review:

A.) It meets Ms. Frederick's clarifications and recommendations as follows:

1. 410-23 (C) (1)
  - a) Street and lot plan to bear the words "preliminary street and lot plan".
  - b) Total area of all public rights-of-way to be dedicated not provided.
  - c) Consent by owners of property to subdivide not dated.
2. 410-23 (C) (2)
  - a) Drainage drawings shall bear the words "preliminary drainage plans".
  - b) Existing contour lines to be shown as solid lines and proposed contours shown as broken lines.
  - c) Drawings to have drainage flow arrows.

3. 410-23 (C) (3)
  - a) Water and Sewer line drawings to bear the words “preliminary water and sewer line plan”.
  - b) Dimension and locate all easements for proposed Town waterlines and sewer line.
4. 410-23 (C) (4)
  - a) Electric line and street light drawings to bear the words “preliminary electric line and streetlight plan”.

B.) A letter be received from the Bethany Beach Council granting approval of the easements being used.

Mr. Boswell seconded the motion, and it was approved. (3-2 vote, Mr. Gaughan and Ms. Denault opposed)

Mr. Loppatto stated that the Planning Commission would draft a memo and submit it to the applicants and Town Council, stating the approval of the application with conditions.

A five (5) minute recess of the meeting was called at this time.

#### Discussion/Approval of the Planning Commission Minutes of May 19, 2012

Mr. Gaughan made a motion to approve the minutes dated May 19<sup>th</sup>, 2012. Seconded by Mr. Peterson, the motion was unanimously approved.

#### Announcements/Comments/Updates

##### *Non-Residential Design Review Update (Denault/Killmer)*

Mr. Killmer reported that a meeting was held on July 13<sup>th</sup>, 2012 to review and vote on the application submitted by Kevin Frey, new tenant of 761 Garfield Parkway (Connor Mall) “Off the Hook Market” for a new sign. The proposal for a new sign met all of the requirements and was approved. At the same meeting on July 13<sup>th</sup>, an application was submitted by Trevor Clark, new tenant of 759-B Garfield Parkway, “1<sup>st</sup> Choice Properties” for a new sign. The application met all of the requirements and was approved.

##### *Comments/Updates Regarding the July Town Council Meeting (Killmer)*

Mr. Killmer reported the following:

- Council approved the Resolution to approve the final annual Assessment List as presented.
- Council approved the resolution to hold a Special Election for the purpose of voting for or against the Town Council’s proposal to borrow a sum of money to construct a new water tower. Mr. Killmer added that currently there are only four (4) people that have filed to run for Town Council and if no one else files before the deadline, there will be no Town election.
- The 2010/2020 Comprehensive Development Plan was approved by Council.

- Council approved the contract submitted by Winner Ford for the purchase of a 2012 Ford F350 Truck for the Water Department.

*Comments. Q&A and Discussion for Planning Commissioner Members (All)*

There were no comments or questions at this time.

#### **PUBLIC COMMENT/QUESTIONS FOR THE PLANNING COMMISSION**

There were no public comments or questions at this time.

#### **SUMMARY OF ACTION ITEMS**

- A. Mr. Killmer will talk to the Town Manager, Cliff Gravier, and Mayor Tony McClenny on Monday regarding the Addy/Cooper application.
- B. Mr. Loppatto will draft a letter to the applicant of the decision of the Preliminary Plan Review for the Addy/Cooper application and submit it to the applicant and Town Council. This letter must be sent to them in ten (10) business days.

#### **ADJOURN**

Ms. Denault made a motion to adjourn the meeting. The motion was seconded by Mr. Peterson and unanimously approved.

The meeting was adjourned at 12:27 p.m.

Respectfully Submitted:

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Lindsey Good, Admin. Secretary